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Nos. 88-449, 88-513

# In The
# Supreme Court Of The United States

OCTOBER TERM, 1988

**JOHN F. HEALY, et al.,**
*Appellants,*

v.

**THE BEER INSTITUTE, et al.,**
*Appellees.*

**WINE AND SPIRITS WHOLESALERS OF CONNECTICUT, INC.,**
*Intervenor-Appellants,*

v.

**THE BEER INSTITUTE, et al.,**
*Appellees.*

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF AFTER ORAL ARGUMENT AND SUPPLEMENTAL BRIEF FOR THE APPELLANTS JOHN F. HEALY, et al. WITH APPENDIX

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25pp

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## MOTION OF APPELLANTS JOHN F. HEALY, et al., FOR LEAVE TO FILE SUPPLEMENTAL BRIEF AFTER ORAL ARGUMENT

Pursuant to the Rules of the Supreme Court of the United States, the Appellants John F. Healy, et al., by and through their undersigned counsel, respectfully move for leave to file the accompanying supplemental brief after oral argument.

The reasons supporting this motion are as follows:

Oral argument in these consolidated appeals was heard on March 28, 1989, and at that time the Court asked several questions concerning the existence of Connecticut brewers. At that time the undersigned Counsel of Record represented to the Court that there were no Connecticut brewers. That representation was correct at the time, however certain events have occurred in Connecticut since which could change those facts in the near future. The supplemental brief brings those facts to the Court's attention pursuant to Counsel's continuing duty to inform the Court of changes in circumstances which may be material to the case.

For the foregoing reasons, the Appellants respectfully request leave to file the accompanying brief.

Respectfully submitted,

JOHN F. HEALY, et al.

CLARINE NARDI RIDDLE
ACTING ATTORNEY GENERAL

ROBERT F. VACCHELLI
Assistant Attorney General
Counsel of Record

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April 26, 1989

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## ARGUMENT

Oral argument in these consolidated appeals was heard on March 28, 1989, and at that time the Court asked several questions concerning the existence of Connecticut brewers. At that time the undersigned Counsel of Record represented to the Court that there were no Connecticut brewers. That representation was correct at the time, and it is still accurate. However, certain events have occurred in Connecticut since which could change the facts in the near future.

First, on April 10, 1989, the New Haven Brewing Company, Inc. filed an application with the Connecticut Department of Liquor Control for a manufacturer permit for beer. *See* Application; App. A. The application is in the process of being reviewed for compliance with the Liquor Control Act. If approved, the applicant would be permitted to manufacture and sell beer to wholesalers within Connecticut and in other states. Conn. Gen. Stat. § 30-16(1),(2).[1] Whether the applicant will sell only in Connecticut, or in other states as well, will be its decision.

Second, on March 30, 1989, the General Law Committee of the Connecticut General Assembly gave a favorable report on a proposed bill creating a new type of permit termed a "Brew Pub." *See* Comm. Bill No. 6301, Conn. Gen. Assem., Jan. Sess. 1989; App. B. The bill was also approved by the Finance, Revenue and Bonding Committee on April 18, 1989 and it could be presented to the State House of Representatives and Senate for vote this Session. If the bill is passed by both houses of the legislature and signed into law by the Governor in its present form, it would allow the manufacture

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[1] Conn. Gen. Stat. § 30-16(1),(2) provides as follows:

(1) A manufacturer permit shall allow the manufacture of alcoholic liquor and the storage, bottling and wholesale distribution and sale of alcoholic liquor manufactured or bottled to permittees in this state and without the state as may be permitted by law; but no such permit shall be granted unless the place or the plan of the place of manufacture has received the approval of the department of liquor control. A holder of a manufacturer permit may apply for and shall receive an out-of-state shipper's permit for manufacturing plants and warehouse locations outside the state owned by such manufacturer or a subsidiary corporation thereof, at least eighty-five per cent of the voting stock of which is owned by such manufacturer, to bring into any of its plants or warehouses in the state alcoholic liquors for reprocessing, repackaging, reshipment or sale either (a) within the state to wholesaler permittees not owned or controlled by such manufacturer or (b) outside the state.

(2) A manufacturer permit for beer only shall be in all respects the same as a manufacturer permit, except that the scope of operations of the holder shall be limited to beer, but shall permit the storage of beer in any part of the state.

and sale of beer to consumers for consumption on the premises of such a facility. Under this bill, a brew pub is a tavern permitted to manufacture its own beer for sale to its patrons. It is not authorized to sell beer to other wholesalers or retailers.

Neither a brew pub licensee, nor a brewer who chooses to sell only in Connecticut, would be required to affirm its prices.

This Supplemental Brief is filed pursuant to Counsel's continuing duty to inform the Court of changes in circumstances which may be material to the case, and to avoid misleading representations.

## CONCLUSION

In all other respects, the Appellants rely on the positions stated in their briefs already on file with the Court.

Respectfully submitted,

JOHN F. HEALY, et al.

CLARINE NARDI RIDDLE
ACTING ATTORNEY GENERAL

ROBERT F. VACCHELLI
Assistant Attorney General
Counsel of Record

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## APPENDIX

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## APPENDIX A

### APPLICATION FOR LIQUOR PERMIT
**State of Connecticut**
**Department of Liquor Control**
**State Office Building**
**Hartford, Conn. 06106**

**A. Enter here the type of permit desired**—MB-1001 Manufacturer of Beer

DATE APPLICATION RECEIVED—APR 10 1989 Department of Liquor Control

AMOUNT OF FEE RECEIVED—900

DATE FEE RECEIVED—4/10/89

RECEIPT NO.—D2096

**B. PLACE OF BUSINESS** **Telephone No. 772-2739**

1. ADDRESS AT WHICH BUSINESS WILL BE CONDUCTED—458 Grand Avenue, New Haven, CT 06513

2. PRESENT TRADE NAME OF BUSINESS, IF ANY—New Haven Brewing Company, Inc.

3. NAME OF BUILDING OWNER—KAM Realty

4. TERM OF LEASE IF APPLICANT IS LESSEE—5 years

a. EXPIRATION DATE—March 3, 1994

5. Is any part of this building used for a dwelling, lodging house, or sleeping quarters?—NO

7. DESCRIBE HERE HOW IT IS CLOSED OFF—Not applicable.

8. Is there now a permit on the proposed premises?—NO

10. FIRE MARSHALL APPROVAL

b. SIGNATURE OF MARSHALL—Not applicable.

11. CERTIFICATE OF ZONING AUTHORITY: This is to certify that the building in item 1 of this section is located in the town or city there stated; that I am acquainted with the zoning ordinances and bylaws of said town or city; and that, at this location, said town or city does not prohibit the sale of alcoholic liquor under the type of permit here applied for. Signature must be less than 30 days.

a. NAME OF TOWN OR CITY—New Haven

b. NAME OF ZONING AUTHORITY—New Haven Zoning Administrator

c. DATE—4/3/89

d. SIGNATURE OF AUTHORIZED OFFICER—/s/ Francesco Gargiulo

e. TITLE—Zoning Administrator

12. CERTIFICATE OF TOWN CLERK

b. DATE—4/3/89

c. NAME OF TOWN OR CITY—New Haven

d. SIGNATURE OF TOWN OR CITY CLERK—/s/ Helen E. Fuller

**C. FOR APPLICANT ONLY (Permittee)**
**HOME Telephone No. 562-2244**

1. NAME OF APPLICANT—Potts, Alan Blair

2. OTHER HOME ADDRESSES DURING PAST 5 YEARS—
   1) 30 Cranston Street, New Haven, CT
   2) 511 Orange Ave., New Haven, CT
   3) 55 Warren Street, New Haven, CT
   4) 265 College Street, New Haven, CT

3. DATE OF BIRTH—4/16/1962

4. SEX—M

5. MARITAL STATUS—Married

6. PRESENT HOME ADDRESS—489 Edgewood Ave., New Haven, CT 06511

7. Are you the sole owner of the business to be conducted under this permit?—NO

**D. TYPE OF BACKER** Check one only. If club, check either Corporation or Unincorporated Association.—CORPORATION

**F. FOR BACKER IF CORPORATION OR UNINCORPORATED ASSOCIATION**

1. NAME OF CORPORATION OR ASSOCIATION—New Haven Brewing Company, Inc.

2. STATE WHERE ORGANIZED—Connecticut

3. DATE OF ORGANIZATION—January 6, 1988

4. FULL HOME-OFFICE ADDRESS—458 Grand Avenue, New Haven, CT 06513

5. Officers, Directors and Shareholders

b. NAME—SS#—See Exhibit 'A'

c. HOME ADDRESS—See Exhibit 'A'

d. NUMBER OF SHARES—See Exhibit 'A'

6. Shareholders and Date of Birth

a. NAME—SS#—See Exhibit 'A'

b. DATE OF BIRTH—See Exhibit 'A'

c. NUMBER OF SHARES—See Exhibit 'A'

**G. FOR APPLICANT, BACKERS (Including Corporations or Unincorporated Association) AND IMMEDIATE FAMILIES OF APPLICANT AND BACKERS.**

1. LIQUOR PERMITS HELD NOW OR PREVIOUSLY

a. By applicant and/or individual backers.—None.

b. By corporation or officers or directors of corporation.—None.

2. PREVIOUS LIQUOR PERMITS REFUSED, REVOKED, FORFEITED, OR SUSPENDED.—None

3. ALL ARRESTS, INCLUDING MOTOR VEHICLES FOLLOWED BY A CONVICTION.—None

4. PUBLIC OFFICES NOW HELD.—None

5. LOANS OR CREDITS RECEIVED FROM MANUFACTURERS OR WHOLESALERS OF ALCOHOLIC LIQUORS.—None.

**H. CLUBS**—Not applicable.

**I. RESTAURANTS**

1. OPERATING FIGURES FOR (MONTH & YEAR)—N/A

2. RECEIPTS—N/A

3. EXPENDITURES—N/A

**J. APPOINTMENT OF APPLICANT AS PRINCIPAL REPRESENTATIVE** (if applicant is not to be sole owner)

By signature on this application, the backers of proposed applicant agree to appoint him as principal representative on the premises where the sale of alcoholic liquor is to be permitted and to vest in him the same full authority and control of these premises and of the conduct of all business therein relative to the sale of alcoholic liquor as said backers could in any way have and exercise; and the applicant agrees to accept such authority and control.

**K. SIGNATURES** This application must be signed and sworn to by the applicant and all backers. If backer is a corporation or an unincorporated association, application must be signed and sworn to by an authorized agent. If permittee is sole backer—permittee must sign lines 1 & 2.

1. APPLICANT (Permittee)—/s/ A. Blair Potts
A. Blair Potts

6. BACKER—/s/ A. Blair Potts
A. Blair Potts, President
New Haven Brewing Company, Inc.

**L. DATE OF APPLICATION**—March 31, 1989

**M. JURATS**

1. FOR APPLICANT PERSONALLY APPEARED the above-named A. Blair Potts, and made oath to the truth of the statements contained in his answers to the foregoing questions.

State of Connecticut, County of Hartford

SS.—Hartford

NOTARIZED BY—/s/ Florence A. Dickson
FLORENCE A. DICKSON
*NOTARY PUBLIC*
MY COMMISSION EXPIRES
MARCH 31, 1991

3. FOR BACKER (Corporation or Unincorporated Association) County Clerk's Certificate must be attached if jurat is taken outside of Connecticut PERSONALLY APPEARED the above-named A. Blair Potts and made oath that he is the President of New Haven Brewing Company, Inc. and is duly authorized to sign in behalf of said organization; that the seal affixed below is the seal of said organization; that the statements contained in his answers to the foregoing questions are true.

Hartford, Connecticut April 3, 1989

NOTARIZED BY—/s/ Florence A. Dickson
FLORENCE A. DICKSON
*NOTARY PUBLIC*
MY COMMISSION EXPIRES
MARCH 31, 1991

## APPENDIX B

STATE OF CONNECTICUT

Committee Bill No. 6301 Page 1

Committee Bill No. 6301 Page PPPL

Referred to Committee on GENERAL LAW

LCO No. 5411

Introduced by (GL)

General Assembly
January Session, A.D., 1989

AN ACT PERMITTING CERTAIN ESTABLISHMENTS TO MANUFACTURE AND SELL BEER FOR ON-PREMISES CONSUMPTION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 30-1 of the general statutes is amended by adding subdivision (38) as follows:

(NEW) (38) "Brew pub" means a place where beer is manufactured and sold for on-premises consumption.

Sec. 2. Subsection (a) of section 30-15 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Permits shall be subject to the regulations of the department of liquor control and the provisions of this chapter and shall be of the following classes:

(1) Airline permit;

(2) Boat permit;

(3) Broker's permit;

(4) Cafe permit;

(5) Charitable organization permit;

(6) (A) Club permit or (B) nonprofit club permit;

(7) Coliseum permit;

(8) Coliseum concession permit;

(9) Concession permit;

(10) Druggist permit;

(11) Golf country club permit;

(12) (A) Hotel permit or (B) hotel permit for beer only;

(13) (A) Manufacturer permit or (B) manufacturer permit for apple brandy or (C) manufacturer permit for cider or (D) manufacturer permit for beer only or (E) manufacturer permit for farm winery OR (F) MANUFACTURER PERMIT FOR BREW PUB;

(14) Military permit;

(15) Nonprofit public art museum permit;

(16) Nonprofit theater permit;

(17) Out-of-state shipper's permit for alcoholic liquors;

(18) Out-of-state shipper's permit for beer only;

(19) (A) Package store permit or (B) grocery store beer permit;

(20) Railroad permit;

(21) Resort permit;

(22) (A) Restaurant permit, (B) restaurant permit for beer only, (C) restaurant permit for wine and beer only or (D) restaurant permit for catering establishment;

(23) (A) Special sporting facility bar permit or (B) special sporting facility concession permit or (C) special sporting facility employee recreational permit or (D) special sporting facility guest permit or (E) special sporting facility restaurant permit;

(24) Tavern permit;

(25) Temporary permit for beer only;

(26) (A) University permit, or (B) university liquor permit;

(27) (A) Warehouse bottling permit or (B) warehouse storage permit;

(28) (A) Wholesaler permit or (B) wholesaler permit for beer only;

(29) (A) Bowling establishment permit or (B) bowling establishment permit for beer only or (C) racquetball facility permit;

(30) (A) Special outing facility permit or (B) special outing facility permit for beer only;

(31) Nonprofit public television corporation permit;

(32) (A) Airport restaurant permit, (B) airport bar permit or (C) airport airline club permit;

(33) Nonprofit golf tournament permit.

Sec. 3. Section 30-16 of the general statutes is repealed and the following is substituted in lieu thereof:

(1) A manufacturer permit shall allow the manufacture of alcoholic liquor and the storage, bottling and wholesale distribution and sale of alcoholic liquor manufactured or bottled to permittees in this state and without the state as may be permitted by law; but no such permit shall be granted unless the place or the plan of the place of manufacture has received the approval of the department of liquor control. A holder of a manufacturer permit may apply for and shall receive an out-of-state shipper's permit for manufacturing plants and warehouse locations outside the state owned by such manufacturer or a subsidiary corporation thereof, at least eighty-five per cent of the voting stock of which is owned by such manufacturer, to bring into any of its plants or warehouses in the state alcoholic liquors for reprocessing, repackaging, reshipment or sale either (a) within the state to wholesaler permittees not owned or controlled by such manufacturer or (b) outside the state.

(2) A manufacturer permit for beer only shall be in all respects the same as a manufacturer permit, except that the scope of operations of the holder shall be limited to beer, but shall permit the storage of beer in any part of the state.

(3) A manufacturer permit for cider not exceeding six per cent alcohol by volume shall allow the manufacture, storage, bottling and wholesale distribution and sale of such cider to permittees and nonpermittees in this state as may be permitted by law; but no such permit shall be granted unless the place or the plan of the place of manufacture has received the approval of the department.

(4) A manufacturer permit for apple brandy shall be in all respects the same as a manufacturer permit, except that the scope of operations of the holder shall be limited to apple brandy.

(5) A manufacturer permit for a farm winery shall be in all respects the same as a manufacturer permit, except that the scope of operations of the holder shall be limited to wine. Such permit shall also authorize the sale in bulk by the holder thereof from the premises where the products are manufactured pursuant to such permit and shall authorize the holder thereof to sell from such premises to a retailer wine manufactured by the farm winery permittee in the original sealed containers of not more than fifteen gallons per container and to sell or deliver such wine to persons outside the state. Such permit shall also authorize the offering and tasting of free samples of wine to visitors and prospective retail customers for consumption on the premises of the farm winery permittee and the selling at retail from the premises sealed bottles or other sealed containers of wine for consumption off the premises, provided a town may, by ordinance or zoning regulation, prohibit any such offering, tasting or selling at retail at premises within such town for which a manufacturer permit for farm winery has been issued. No licensed farm winery shall sell any wine not manufactured in such winery. The farm winery permittee shall produce within the state an average crop of fruit equal to not less than fifty-one per cent of the fruit used in the manufacture of the farm winery permittee's wine. An average crop shall be defined each year as the average yield of the farm winery permittee's two largest annual crops out of the preceding five years, except that

during the first seven years from the date of issuance of a farm winery permit, an average crop shall be defined as three tons of grapes for each acre of vineyard farmed by the farm winery permittee. A holder of a manufactured permit, except a manufacturer permit for cider, may apply for and shall receive a wholesaler permit.

(6) A MANUFACTURER PERMIT FOR A BREW PUB SHALL ALLOW THE MANUFACTURE, STORAGE, BOTTLING AND RETAIL SALE OF BEER TO BE CONSUMED ON THE PREMISES WITH OR WITHOUT THE SALE OF FOOD.

Sec. 4. Subsection (a) of section 30-41 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The fees per annum for permits under this chapter shall be as follows:

(1) Airline permit, four hundred dollars;
(2) Boat permit, four hundred dollars;
(3) Broker's permit, one hundred sixty dollars;
(4) Cafe permit, seventeen hundred fifty dollars;
(5) Charitable organization permit, twenty-five dollars;
(6) (A) Club permit, two hundred forty dollars, (B) nonprofit club permit, six hundred fifty dollars;
(7) Coliseum permit, two thousand dollars;
(8) Coliseum concession permit, one thousand dollars;
(9) Concession permit for the period of one year, two hundred forty dollars; for a period of six months, one hundred sixty dollars and for one day, twenty-five dollars;
(10) Druggist permit, four hundred dollars;
(11) Golf country club permit, eight hundred dollars;
(12) Hotel permit, (A) in towns having a population according to the last-preceding United States census of ten thousand or less, twelve hundred dollars, (B) in all other towns having a population of fifty thousand or less, sixteen hundred dollars, and (C) in all other towns, twenty-four hundred dollars, (D) hotel permit for beer only, two hundred forty dollars;

(13) (A) Manufacturer permit, sixteen hundred dollars, (B) manufacturer permit for apple brandy, three hundred twenty dollars, (C) manufacturer permit for cider, one hundred sixty dollars, (D) manufacturer permit for beer only, eight hundred dollars, (E) manufacturer permit for farm winery, two hundred forty dollars, (F) MANUFACTURER PERMIT FOR BREW PUB, TWO HUNDRED FORTY DOLLARS;

(14) Military permit, fifteen dollars;

(15) Nonprofit public art museum permit, two hundred dollars;

(16) Nonprofit theater permit, two hundred dollars;

(17) A Connecticut manufacturer or wholesaler holding an out-of-state shipper's permit for alcoholic liquor or for beer only, forty-five dollars; any other person holding an out-of-state shipper's permit for alcoholic liquors or for beer only, one thousand dollars;

(18) (A) Package store permit, four hundred dollars, (B) grocery store beer permit, eighty dollars;

(19) Railroad permit, four hundred dollars;

(20) Resort permit, twelve hundred dollars;

(21) (A) Restaurant permit, twelve hundred dollars, (B) restaurant permit for beer only, two hundred forty dollars, (C) restaurant permit for wine and beer only, five hundred sixty dollars, (D) restaurant permit for catering establishment, twelve hundred dollars;

(22) (A) Special sporting facility bar permit, three hundred dollars, (B) special sporting facility concession permit, two hundred forty dollars, (C) special sporting facility employee recreational permit, two hundred forty dollars, (D) special sporting facility guest permit, two hundred forty dollars, and (E) special sporting facility restaurant permit, twelve hundred dollars;

(23) Tavern permit, two hundred forty dollars;

(24) Temporary permit for (A) alcoholic liquor, twenty-five dollars, (B) for beer only, fifteen dollars per day;

(25) (A) University permit for beer only, two hundred forty dollars; (B) university permit for wine and beer only, five hundred sixty dollars, (C) university liquor permit, two hundred forty dollars;

(26) (A) Warehouse bottling permit, one hundred sixty dollars, (B) warehouse storage permit, thirty-five dollars;

(27) (A) Wholesaler permit, twenty-four hundred dollars, (B) wholesaler permit for beer only, eight hundred dollars;

(28) (A) Bowling establishment permit, two thousand dollars, (B) bowling establishment permit for beer only, three hundred fifty dollars or (C) racquetball facility permit, two thousand dollars;

(29) (A) Special outing facility permit, one thousand two hundred dollars, (B) special outing facility permit for beer only, two hundred forty dollars;

(30) (A) Nonprofit public television corporation permit, twenty-five dollars, (B) nonprofit corporation permit, twenty-five dollars;

(31) (A) Airport restaurant permit, twelve hundred dollars, (B) airport bar permit, three hundred dollars; (C) airport airline club permit, six hundred fifty dollars;

(32) Nonprofit golf tournament permit, two hundred dollars.

Sec. 5. Subsection (c) of section 30-91 of the general statutes is repealed and the following is substituted in lieu thereof:

(c) The sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of alcoholic liquor by an individual in places operating under a tavern permit OR MANUFACTURER PERMIT FOR A BREW PUB shall be unlawful on Saturday between two o'clock a.m. and nine o'clock a.m. and Sunday after two a.m. except on Christmas; and such sale or dispensing or consumption or presence in glasses or other receptacles in such tavern OR BREW PUB shall be unlawful on any other day between the hours of one o'clock a.m. and nine o'clock a.m. Any town may, by a vote of a town meeting or by ordinance, reduce the number of hours during which such sale shall be permissible or prohibit the sale of alcoholic liquor from twelve o'clock midnight on Saturday until two a.m. on Sunday or allow the sale of alcoholic liquor between the hours of twelve o'clock noon on Sunday and one o'clock a.m. on

Monday in places operating under a tavern permit OR MANUFACTURER PERMIT FOR A BREW PUB. In the case of any tavern OR BREW PUB wherein, under the provisions of this section, the sale of alcoholic liquor is forbidden on certain days or hours of the day, or during the period when a tavern permit OR MANUFACTURER PERMIT FOR A BREW PUB is suspended, it shall likewise be unlawful to keep such tavern or BREW PUB open to, or permit it to be occupied by, the public on such days or hours.

Sec. 6. This act shall take effect July 1, 1989

STATEMENT OF PURPOSE: To allow certain establishments to brew their own beer and sell it for on-premises consumption.

[Proposed deletions are enclosed in brackets. Proposed additions are all capitalized or underlined where appropriate, except that when the entire text of a bill or resolution or a section thereof is new, it is not capitalized or underlined.]

Co-Sponsors: REP. SCHIESSL, 60th DIST.